DOCUMENT NO. 5059
ADOPTED 6/9/88

# MEMORANDUM OF AGREEMENT

BETWEEN THE

THE BOSTON REDEVELOPMENT AUTHORITY

AND THE

DEPARTMENT OF ADMINISTRATIVE SERVICES OF THE CITY OF BOSTON

REGARDING THE EXECUTIVE ORDER ON

MINORITY AND WOMEN BUSINESS ENTERPRISE DEVELOPMENT

This Memorandum of Agreement dated the ____ of _____, 1988 (the "Agreement"), is entered into by and between between the Boston Redevelopment Authority, a body politic and corporate having offices at City Hall, Boston, Massachusetts ("the BRA") and the Department of Administrative Services of the City of Boston (the "City") to implement the City of Boston Minority and Women Business Enterprise Development (the "W/MBE") Program as promulgated in the Executive Order adopted by the Mayor on December 17, 1987 (the "Executive Order") and in accordance with the ordinance adopted by the City Council on December 30, 1987 and approved by the Mayor on December 31, 1987 (the "City Ordinance").

## WITNESSETH THAT:

WHEREAS, Mayor Raymond L. Flynn on December 17, 1987, adopted an Executive Order on Minority and Women Business Enterprise Development, incorporated herein by reference, and the City Council, on December 30, 1987, adopted the City Ordinance to promote equality of opportunity in the economic life of the City for minority and women-owned businesses; and

WHEREAS, Article V of the Executive Order encourages statutorily independent agencies such as the BRA to adopt and comply with the standards on the hiring of minority and women-owned business embodied in the Executive Order;

NOW, THEREFORE, the parties hereto, each with the other, agree as follows:

## I. Purpose of Agreement

The purpose of this Agreement is to encourage the cooperation of the BRA in implementing the requirements and commitments of the Executive Order and the City Ordinance. It is the intent of this agreement to specify the role of each party in carrying out the mandates of the M/WBE Program in order to maximize the opportunity for minority and women-owned businesses to participate in the City's contracting for goods, services and construction, and to establish procedures for reporting and communication to ensure compliance with the standards for hiring embodied in the Executive Order and the City Ordinance.

## II. Minority and Women Business Advisory Council

The BRA agrees to comply with requests for information on M/WBE Program implementation and compliance from the Minority and Women Business

Advisory Council established in accordance with Article III(c) of the Executive Order. The BRA shall also participate in a special committee which shall consist of representatives of statutorily independent agencies. Such committee shall be chaired by the City M/WBE Program Coordinator (the "Coordinator").

## III. Agency Responsibilities

1. The BRA shall adopt and implement the Executive Order.

2. The BRA shall work with the Coordinator to develop a comprehensive reporting mechanism to document its progress toward increasing the utilization of minority and women-owned businesses in the award of contracts by the BRA for goods, services, and construction.

3. The BRA and the City shall share resources and information in order to comply with the mandates of the M/WBE Program.

4. The Coordinator shall consult with his/her counterpart at the BRA on any and all changes, amendments or deletions to the Executive Order or to the procedures for implementation of the Executive Order.

5. The BRA shall work with the Coordinator to adopt consistent procedures, where possible, for the implementation of the Executive Order.

## IV. Measures of Compliance

1. The BRA will submit to the Coordinator, on a monthly and quarterly basis, documentation of compliance with the Executive Order, which will include but not be limited to, documentation of all good faith efforts as described in the Procedures for implementing the M/WBE Program, dated December, 1987, and incorporated herein by reference.

2. The Coordinator may request that the BRA submit additional information or undertake additional outreach to achieve the goals of the Executive Order.

## V. Training and Information Sharing

The Coordinator for the City will provide training to the BRA staff on M/WBE Program implementation, and will advise BRA staff on the impact of new laws and regulations and other issues affecting the program. The BRA will provide the Coordinator information on the Affirmative Action programs and policies of the BRA. Both parties to this Agreement will respond in a timely manner to information requests.

## VI. Effective Date

This Agreement will become effective on the date that it is executed by both parties and will apply to the procurement of goods and services, and the award of construction contracts by the BRA.

VII. Agency Powers

Nothing in this agreement is intended to abridge or constrain the statutory powers and authority of either the BRA or the City. The BRA shall independently exercise its power to enter into contracts as specified in statute, ordinance, regulation and otherwise.

Approved as to form:

BOSTON REDEVELOPMENT AUTHORITY

Chief General Counsel

Stephen Coyle, Director

CITY OF BOSTON

Raymond Dooley, Director
Administrative Services

CITY OF BOSTON · MASSACHUSETTS

OFFICE OF THE MAYOR
RAYMOND L. FLYNN

# EXECUTIVE ORDER

# OF

# MAYOR RAYMOND L. FLYNN

# ON

# MINORITY AND WOMEN BUSINESS ENTERPRISE DEVELOPMENT

WHEREAS, it has consistently been the policy of this Administration to promote equality of opportunity in the economic life of the City, and

WHEREAS, the amount of revenue generated by City contracts greatly impacts the local economy and business development of the City, and

WHEREAS, women and minority businesses have not been able to participate in an equitable manner in the receipt of City contracts due to the continuing effects of past discrimination within the City of Boston, and

WHEREAS, these past practices have resulted in the underrepresentation and underutilization of minority and women businesses in the receipt of City contracts, and

WHEREAS, non-discrimination alone in the awarding of City contracts is not sufficient to remedy the continuing effects of these past practices, the need exists for affirmative steps to be taken to ensure that minority and women businesses are utilized to the fullest extent possible, and

WHEREAS, there is an existing pool of capable and qualified minority and women business enterprises, ready and willing to do business with the City, this resource must be used so that the City's contractors will reflect the diversity of Boston's population,

NOW, THEREFORE, I hereby issue this order to all City departments and personnel, to ensure the equitable participation of minority and women businesses in the City's contracting arena.

Article I: POLICY

It is the policy of the City of Boston to encourage, assist and provide the maximum opportunity for minority and women owned businesses to participate in the City's contracting arena. To this end, the City will increase both the number of Minority and Women Business Enterprises that receive City contracts and the amount of contractual dollars awarded to Minority and Women Business Enterprises. The goals of the Minority and Women Business Enterprise Development Program are consistent with this Administration's philosophy of inclusion for all of Boston's residents in the prosperity of the City. Thus, the City shall promote and affirmatively market contract opportunities for minority and women owned businesses by establishing participation requirements consistent with this Order.

Article II: STANDARDS

A. GOODS AND SERVICES

The City shall require that a minimum of fifteen percent (15%) in the procurement of all goods and services including professional and consulting servcies be supplied by certified Minority Business Enterprises (MBEs), and a minimum of five percent (5%) in the procurement of all goods and services including professional and consulting services be supplied by certified Women Business Enterprises (WBEs), out of the eligible contract dollars awarded by the City and its departments during each Fiscal Year. This requirement shall include all legally enforceable agreements, including service and purchase orders, without regard to specific awarding or advertising processes for the provision of supplies, labor, materials, and services, including professional and consulting services, franchises, concessions, and leases.

B. CONSTRUCTION

A minimum of fifteen percent (15%) of the eligible contract dollars of each construction related contract awarded during each fiscal year shall be awarded to certified MBEs. The fifteen percent minimum shall be increased to thirty percent (30%) of the eligible contract dollars of each construction related contract let within an impacted area.

A minimum of five percent (5%) of the eligible contract dollars of each construction related contract awarded during each fiscal year shall be awarded to certified WBEs.

## Article III: IMPLEMENTATION

### A. OPERATIONAL RESPONSIBILITIES

#### 1. The Director of Administrative Services

The Director of Administrative Services will be responsible for the development, coordination, and implementation of the Order by City departments and the initiation of corrective action, where necessary. The Director of Administrative Services will work closely with the Mayor's Senior Advisor on Equal Rights and the Mayor's Policy Director on issues relating to the Order.

#### 2. The M/WBE Coordinator

The M/WBE Coordinator will assist the Director of Administrative Services in the development and coordination of this Order and will assume primary responsibility for monitoring departmental compliance with the Order. The Coordinator will report to the Director of Administrative Services and will work in conjunction with the Purchasing Agent and the Director of the Office of Contract Management to implement this policy. The Coordinator will work closely with the Mayor's Senior Advisor on Equal Rights, the Mayor's Policy Director and the Deputy Director of the Office of Jobs and Community Services (hereinafter the Deputy Director for Compliance and Enforcement). Among the responsibilities of the Coordinator will be to:

a. Assist the Director of Administrative Services in the preparation, dissemination, implementation, revision, and monitoring of the City of Boston's Implementation Plan for contracting with M/WBEs.

b. Work with department heads, managers, supervisory personnel, and appointing authorities to develop departmental implementation plans.

c. Staff and assist the efforts of the Minority and Women Business Advisory Council.

d. Develop and implement an effective outreach program for M/WBEs to encourage their maximum participation in the City's contracting process.

e. Provide assistance to departments in the identification of minority and women vendors.

f. Assess individual department's compliance with their implementation plan and, where necessary, recommend corrective action to the department head and the Director of Administrative Services .

g. Coordinate regular training programs for City personnel.

h. Prepare quarterly and annual reports for the Mayor on the performance of all City departments.

i. Develop effective communication with and serve as the City's liaison to, federal and state agencies, and local business associations and professional organizations.

3. <u>The Mayor's Policy Director</u>

The Mayor's Policy Director will work with the Mayor's Senior Advisor on Equal Rights and the Director of Administrative Services on policy direction and on the review of program implementation and compliance.

4. <u>The Mayor's Senior Advisor on Equal Rights</u>

The Mayor's Senior Advisor on Equal Rights, reporting to the Mayor, will oversee the Policy direction of the Order by the City. In addition, the Senior Advisor will serve on the Minority and Women Business Advisory Council.

5. <u>The Purchasing Agent and the Director of the Office of Contract Management</u>

The Purchasing Agent and the Director of the Office of Contract Management will play an essential role in the implementation of this Order. Among their responsibilities will be to:

a. Maintain a list of goods and services used by the City and inform minority and women vendors of potential contract opportunities.

b. Identify contract opportunities in which the City has traditionally underutilized minority and women business participation.

c. Take affirmative action to develop and encourage minority and women business participation.

d. Disseminate the "City Record" to minority and women business enterprise vendors.

6. The Deputy Director for Compliance and Enforcement

The Deputy Director for Compliance and Enforcement will monitor, implement, and enforce the M/WBE plan for construction related contracts and comply with the provisions of the Ordinance creating the Boston Employment Commission. The Deputy Director will work with the State Office of Minority Business Assistance in certifying M/WBEs. The Deputy Director shall forward copies of all compliance and enforcement reports to the Director of Administrative Services, the M/WBE Coordinator and the Boston Employment Commission.

B. OPERATIONAL PLAN

1. The City will publish every two years, or more often as necessary, a City M/WBE Implementation Plan. The components of the City's Plan shall include, but not be limited to: (1) departmental requirements for submitting Implementation Plans and inclusion of these plans in the department's annual budget submission, (2) procedures to address grievances, (3) review of the vendor payment process, (4) procedures by which City departments and contractors document their good faith efforts to comply with this Order, (5) quarterly and annual reports, (6) outreach efforts to minority and women vendors, (7) training for appropriate City personnel, (8) guidelines for the uniform compilation and reporting of statistical M/WBE data, (9) development of appropriate contract language for implementing this policy, (10) enforcement procedures, and (11) maintenance of a list of eligible M/WBEs, a reference library of all sources to be used to locate M/WBEs, and the dissemination of such information to City departments.

2. The following factors are necessary requirements for departmental compliance with this Order:

a. Preparation of an annual departmental implementation plan, to be submitted with the budget, which includes, but is not limited to, goals, objectives, performance criteria and tasks for complying with the M/WBE program.

b. Effective coordination of departmental efforts with the M/WBE Coordinator in order to fully comply with this Order.

c. Maintenance of a reference list of M/WBEs for departmental contracts.

d. Documentation of good faith efforts to contact M/WBEs for bids.

e. Maintenance of records denoting M/WBEs contacted, the method by which they were contacted, and their responses.

f. Targeting of advertisements in areas likely to attract M/WBEs and the release of those advertisements in a timely manner.

g. Maintenance of copies of Invitations to Bid and Requests for Proposals.

h. Designation of the senior administration and finance staff person for each department, or the equivalent senior staff person in departments without administration and finance staff, to coordinate the development and implementation of the M/WBE program.

i. Submission of quarterly and annual reports, on a timely basis, to include the total number and dollar value of contracts awarded and expensed to M/WBEs and documentation of the methods used to ensure the full participation of M/WBEs. These methods may include promoting joint ventures, subcontracting, dividing large contracts into smaller units, establishing sheltered market programs, and the conducting of departmental training sessions.

j. Attainment of the required percentage of utilization of M/WBEs.

3. If a department is determined to be in noncompliance with this Order, the Minority and Women Business Advisory Council will be notified and progressive enforcement will be achieved by the following steps:

STEP 1

Departments shall submit Requests for Proposals and Requests for Bids, along with a list of vendors to be contacted to the Director of Administrative Services and to the M/WBE Coordinator five (5) days prior to distribution and/or advertisement.

STEP 2

Prior to the department's awarding of a contract, the

contract must carry the signature of the M/WBE Coordinator in addition to those required by State law, City Ordinance, or administrative regulations.

STEP 3

Prior to the awarding of a contract, the department will submit an analysis of the bid process to include the names of businesses contacted, name of business selected, and other information required by the M/WBE Coordinator. The analysis must be filed with the Director of Administrative Services and the M/WBE Coordinator to ensure that eligible M/WBE vendors had been contacted. If the M/WBE Coordinator determines that eligible M/WBE vendors were not contacted, the department may be required by the Director of Administrative Services to solicit new bids.

STEP 4.

At the direction of the Mayor, the contract award process will be handled by an internal awarding committee.

STEP 5

Any other action deemed appropriate which may include the Director of Administrative Services authorizing the City Auditor to encumber up to fifteen (15%) of that portion of a department's budget earmarked for contractual services.

C. MINORITY AND WOMEN BUSINESS ADVISORY COUNCIL

The Mayor shall establish a Minority and Women Business Advisory Council. The members, not to exceed eleven (11), will be appointed by the Mayor and will be composed of City officials and persons outside of the Administration. The City officials shall not exceed three (3) persons and shall consist of the Mayor's Senior Advisor on Equal Rights, the Mayor's Advisor on Women's Issues or a representative of the City's Women's Commission and the Mayor's Policy Director. The Council shall be chaired by a representative of the M/WBE community and shall be staffed by the M/WBE Coordinator.

The Mayor shall recommend to the City Council that Council Members shall be made Special Municipal Employees for the purposes of Massachusetts General Law chapter 268A.

Members shall be appointed or reappointed for three (3) year terms except that the initial members of the Council shall be appointed on a staggered basis with one-third of the Council's term expiring after three (3) years, one-third after two (2), and one-third after one (1) year.

The Council shall meet not less than monthly.

ARTICLE IV: DEFINITIONS

For the purposes of this Executive Order, the following definitions shall apply:

"CERTIFICATION", means the process by which a business enterprise meets the standards promulgated by the Compliance and Enforcement Divison of the Mayor's Office of Jobs and Community Services and the State Office of Minority Business Assistance.

"CITY", means the City of Boston.

"CITY DEPARTMENT", means those departments under the supervision of the Mayor or persons appointed by him, to include the Boston Public Library and the Department of Health and Hospitals.

"CONTRACT", means a legally enforceable agreement for the provision of supplies, labor, materials, services, construction, franchises, concessions, or leases granted by or on behalf of the City.

"CONTROLLED", means a business whose management policies and daily business operations are dominantly controlled by one or more Minority Persons or Women. Control shall include, but not be limited to, dominant control over:

1. the purchase of goods, equipment, business inventory, and services,

2. the hiring and firing of employees,

3. the corporate accounts and other financial affairs, and

4. solicitation and negotiation of contracts and the offering and acceptance or rejection of bids.

"ELIGIBLE CONTRACT DOLLARS", shall refer to the total dollar amount of contracts awarded or expensed as set forth under the provisions of this Executive Order and guidelines and procedures issued pursuant thereto.

"FISCAL YEAR", means the period from July 1 through June 30.

"IMPACTED AREA", means an area of the City where the proportion of minority residents is greater than the proportion of minority residents in the City as a whole, as determined by OJCS through the use of census data.

"MINORITY PERSON", means a citizen or legal resident alien of the United States who is Black, Hispanic, Native American, Asian or Cape Verdean, as defined by the Massachusetts State Office of Minority Business Assistance (SOMBA).

"MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE)", means a business which is owned, controlled, and managed by one or more Minority Persons or Women.

"OWNED", means a business which is at least fifty-one percent (51%) owned by one or more Minority Persons or Women.

1. In the case of a corporation, at least fifty-one percent (51%) of all classes of voting stock and/or interests of such corporation must be owned by one or more Minority Persons or Women.

2. In the case of a partnership, at least fifty-one percent (51%) of such partnership interest must be owned by one or more Minority Persons or Women.

3. In the case of a limited partnership, the Minority Persons or Women must act as general partners and own at least fifty-one (51%) of the general partnership interest of such limited partnership.

4. In the case of a joint venture, at least fifty-one percent (51%) of the controlling interest of such joint venture must be owned by one or more Minority Persons or Women.

5. In the case of a sole proprietorship, the Minority Person or Woman must own and control the business.

6. In any other form of business organization, one or more Minority Persons or Women must own at least fifty-one percent (51%) of the business.

7. An ownership interest held by one or more Minority Persons or Women shall not qualify as being an interest held by said Person(s) if an agreement, option, scheme, security interest, or document would, if exercised, result in less than fifty-one percent (51%) ownership of the business and/or dominant control of the business by one or more Minority Persons or Women.

## ARTICLE V: GENERAL IMPLEMENTATION POLICY

A. This Executive Order applies to all City and County agencies. With respect to statutorily independent agencies, every effort will be made to secure adoption and compliance with this Executive Order.

B. In order to assure total compliance with this Order, all department heads, managers, supervisory personnel, and appointing authorities are to cooperate to the fullest in carrying out the systems and procedures for proper implementation, reporting and enforcement of this policy.

C. Promulgated in conjunction with this Executive Order is an Implementation Plan which shall take effect immediately.

D. This Executive Order is subject to review by the Mayor on an annual basis to reassess the continuing desirability and viability of the program.

This policy is effective immediately, and is intended to supersede the Executive Order of July 1, 1978 relating to Minority Business for the City of Boston. It shall remain in effect until its objectives are met.

Raymond L. Flynn

Raymond L. Flynn, Mayor

4/17/87

Date

MEMORANDUM JUNE 9, 1988

TO: BOSTON REDEVELOPMENT AUTHORITY AND STEPHEN COYLE, DIRECTOR

FROM: JOSEPH J. NOONAN, ASSISTANT DIRECTOR FOR MANAGEMENT AND BUDGET

SUBJECT: IMPLEMENTING MAYOR'S EXECUTIVE ORDER ON MINORITY AND WOMEN BUSINESS ENTERPRISE DEVELOPMENT

---

SUMMARY Mayor Raymond L. Flynn adopted an Executive Order on Minority and Women Business Enterprise Development on December 17, 1987 increasing City of Boston quotas for the hiring of women and minority-owned businesses upon award of City contracts for goods, services and construction. Article V of the Executive Order encourages statutorily independent agencies such as the Boston Redevelopment Authority to adopt and comply with the standards of the Executive Order.

---

On December 17, 1987, the Mayor adopted an Executive Order on Minority and Women Business Enterprise Development (the "Executive Order"), the purpose of which is to encourage, assist and maximize opportunity for minority and women-owned businesses to participate in the city's contracting for goods, services and construction. Article V of the Executive Order encourages statutorily independent agencies such as the Boston Redevelopment Authority to voluntarily implement and comply with the standards on minority and women hiring in the procurement of goods and services, and in the award of construction contracts. The Executive Order supersedes the Mayor's Executive Order of July 1, 1978 encouraging minority business enterprise (the "Executive Order of 1978") by raising minimum requirements for minority business enterprise development and establishing new standards for women business enterprise development.

The Executive Order has these features:

I. Goods and Services

In the procurement of all goods and services, including professional and consulting services:

1. A minimum of Fifteen Percent (15%) shall be supplied by certified Minority Business Enterprises ("MBEs"). (The Executive Order of 1978 required that only 10% of goods and services contracts be reserved for MBEs.)

2. A minimum of Five Percent (5%) shall be supplied by certified Women Business Enterprise ("WBEs"). (The Executive Order of 1978 did not require the award of contracts to WBEs.)

II. Construction

1. A minimum of Fifteen Percent (15%) of the eligible contract dollars of each construction-related contract shall be awarded to MBEs. (The Executive Order of 1978 required only 10% of construction contracts for MBEs.)

2. A minimum of Thirty Percent (30%) of the eligible contract dollars of each construction related contract within an "impacted area" (as designated by the Mayor's Office of Jobs and Community Service) shall be awarded to MBEs. (This quota does not alter the requirement of the Executive Order of 1978.)

3. A minimum of Five Percent (5%) of the eligible contract dollars of each construction-related contract shall be awarded to WBEs. (The Executive Order of 1978 did not require the award of contracts to WBEs.)

The policy of the Authority has been to comply with the standards of the Executive Order of 1978, in order to promote the goal of opportunity in the economic life of the City of Boston. The new Executive Order, signed by the Mayor on December 17, 1987, seeks to expand the opportunities for minority and women-owned businesses to secure City contracts for goods, services and construction. Adoption of the new Executive Order by the Authority will ensure more equitable participation of minority and women businesses in the City's contracting process.

The attached Memorandum of Agreement between the Authority and the City of Boston would secure the cooperation of the Authority to maximize opportunities for minority and women-owned businesses, in accordance with the Executive Order. The Authority's Contract Compliance officer and the Purchasing Manager have been directed to establish internal procedures for monitoring agency performance and compliance in accordance with the Executive Order. Both the Memorandum of Agreement and the Executive Order have been reviewed by the legal staff of the Authority.

An appropriate vote follows:

VOTED: That the standards contained in the Mayor's Executive Order dated December 17, 1987 are hereby adopted as policy of the Authority, and that, in accordance with such Executive Order, the Director of the Authority shall maximize the opportunity for minority and women-owned businesses to more equitably participate in the receipt of contracts for goods, services and construction. Furthermore, the Director of the Authority is hereby authorized to execute a Memorandum of Agreement with the City of Boston, in substantially the form attached herewith, in order to implement the Mayor's Executive Order dated December 17, 1987.